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SERVICE DATE – NOVEMBER 18, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-878

CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY

Decided: November 17, 2005

This decision: (1) denies a request by Pioneer Industrial Railway Company (PIRY) to hold in abeyance a petition to reopen a prior Board decision for immediate modification or clarification; and (2) denies the petition to reopen.

BACKGROUND

In a decision served in this proceeding on August 10, 2005 (August Decision), the Board granted an Adverse Discontinuance application by the City of Peoria and the Village of Peoria Heights (jointly, the Cities), authorizing the discontinuance of service by PIRY over an 8.29-mile rail line, known as the Kellar Branch in Peoria County, IL. The decision also granted the Cities' motion to reject PIRY's notice of intent to file an offer of financial assistance under 49 U.S.C. 10904 and denied a request by PIRY that the Board appoint a mediator.

Nine days after we issued the August Decision, PIRY filed a petition to reopen, seeking modification or clarification.¹ PIRY asks us to issue an order prohibiting the Cities from removing the existing track on the Kellar Branch line until: (1) a state court issues an order adjudicating whether PIRY's contract to operate the line has expired, and (2) the current operator, Central Illinois Railroad Company (CIRY), obtains authority from the Board to discontinue service on the line. According to PIRY, this immediate relief is necessary to prevent the Cities from carrying out their planned removal of most of the line, once construction of a connection to a former Union Pacific Railroad Company spur is completed. PIRY expresses concern that it and the public might be irreparably harmed if the line were to be removed prior to satisfaction of these two prerequisites.

The Cities replied in opposition on September 8, 2005. They argue that no modification or clarification of the Board's decision is necessary. They contend that the August Decision, at 6, clearly provides that no part of the Kellar Branch line may be

¹ On August 23, 2005, PIRY supplemented its petition by filing a newspaper article containing quotes from city officials, which PIRY cites in support of its need for relief.

removed until CIRY's operating authority over the segment is lawfully discontinued. The Cities state that they will abide by our decision.

Also on September 8, 2005, PIRY filed a letter in response to the Cities' filing. PIRY requests that its petition to reopen be held in abeyance, pending the outcome of its own state court action in Pioneer Industrial Railway Co. v. D.O.T. Rail Services, Inc., et al., LaSalle County Illinois Circuit Court No. 05-L-146 (Pioneer), seeking a preliminary injunction against removal of the trackage at issue, and pending the anticipated filing by CIRY of a petition seeking discontinuance authority from the Board. PIRY states that it will rely on the Cities' assurances that the track will not be removed until a Board decision granting discontinuance authority to CIRY is issued and becomes effective.

CIRY filed a petition for exemption to discontinue service from milepost 8.50 to milepost 2.21 of the Kellar Branch on September 12, 2005. The petition was docketed as STB Docket No. AB-1066X, Central Illinois Railroad Company—Discontinuance of Service Exemption—in Peoria County, IL (CIRY Discontinuance). The Board served and published a notice instituting a proceeding in CIRY Discontinuance in the Federal Register on September 30, 2005 (70 FR 57365). A final decision in that matter will be issued by December 30, 2005.

The Cities opposed holding the petition to reopen in abeyance in a letter dated September 28, 2005. They note that CIRY has filed the petition for discontinuance authority. They maintain that there is no need or justification to hold PIRY's petition in abeyance pending completion of the state court proceeding in Pioneer. They explain that that action involves issues beyond our jurisdiction, inasmuch as the rail line acquired by the Cities had already been fully abandoned, and the Cities have not held themselves out as common carriers, so that only Board authority to discontinue all operations is needed for this line. See August Decision at 6. Finally the Cities indicate that, if the state court were to enjoin removal of the track at issue here, they would abide by that decision.

PRELIMINARY MATTER

We deny PIRY's request to hold its petition to reopen in abeyance. CIRY has filed a petition for exemption to discontinue service and PIRY has filed an action in state court seeking to enforce rights that it claims it possesses under its contract with the Cities. There is no reason to hold PIRY's petition to reopen in abeyance to await resolution of either the pending discontinuance or state court proceeding. Accordingly, we will now proceed to decide the merits of the petition to reopen.

DISCUSSION AND CONCLUSIONS

There is no need to reopen in order to modify or clarify the August Decision to state that the Cities may not remove the track on the line pending resolution of PIRY's state court action in Pioneer. In opposing the Cities' adverse application to discontinue PIRY's service, PIRY argued that it had a continuing contractual right to operate the line. In the August Decision, we removed our primary jurisdiction to allow a court to interpret or enforce the Cities' agreement with PIRY because we found that the public interest did not require PIRY's service on the line. But we stated that, if a state court "finds that the contract still entitles (PIRY) to provide service on the line, our action here does not preclude PIRY from providing that service. . . ." August Decision at 6-7. Moreover, the Cities have specifically agreed that, if the court in Pioneer were to enjoin removal of the track, they would abide by that decision.

There is also no need to modify or clarify the August Decision to state that the Cities may not remove track until CIRY has received discontinuance authority. The August Decision made clear that CIRY must obtain discontinuance authority before service on the line could cease. The Cities state that they will not remove the track until discontinuance authority is exercised by CIRY pursuant to Board authority, and PIRY has agreed to rely on the Cities' assurances. See CIRY reply at 3 and PIRY letter of September 8, 2005. CIRY has begun the process of obtaining discontinuance authority in CIRY Discontinuance. Any concern about changes to the configuration and operation of the Kellar Branch arising from the discontinuance of service by CIRY, and the effect of those changes on the public interest, can be considered in that proceeding.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PIRY's request to hold its petition to reopen in abeyance is denied.
2. PIRY's petition to reopen for immediate modification or clarification is denied.
3. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary